

No. 10413

United States
Circuit Court of Appeals
For the Ninth Circuit.

ARLEY VIRGLE TUDOR,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

AUG - 2 1943

PAUL P. O'BRIEN.

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

WILLIAM H. CHESTER,

Phoenix National Bank Building,
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FRANK E. FLYNN,

United States Attorney,
U. S. Courthouse,
Phoenix, Arizona

JAMES A. WALSH,

ELBERT R. THURMAN,

Assistant United States Attorneys,
U. S. Courthouse,
Phoenix, Arizona.

Attorneys for appellee. [3*]

In the District Court of the United States
For the District of Arizona

C-6414 PHX

INDICTMENT

United States of America
District of Arizona—ss.

Violation: 50 U.S.C. 311 Selective Training and Service Act.

In the District Court of the United States in and for the District of Arizona, at the November Term Thereof, A. D. 1942.

The Grand Jurors of the United States of America, impaneled, sworn and charged at the term aforesaid, of the Court aforesaid, on their oath present that on the 8th day of May, 1942, at Glendale, Arizona, and within the jurisdiction of this Court, Arley Virgle Tudor, whose full and true name other than as given herein is to the Grand Jurors unknown, being then and there a person liable for training and service under the Selective Training and Service Act of 1940, and the amendments thereto, and having theretofore registered under said Act, knowingly, wilfully, unlawfully, and feloniously did fail and neglect to perform a duty required of him under and in the execution of said Act and the Rules and Regulations duly made pursuant thereto, in this, that the said Arley Virgle Tudor, having been classified in Class I-A by his local Board, being Maricopa County Local Board No. 6, created and located in Maricopa

County, Arizona, under and by virtue of the provisions of the Selective Training and Service Act of 1940, as amended, and the Rules and Regulations issued thereunder, and said defendant having been notified by said board to report at Glendale, Arizona, on May 8, 1942, for induction into the land or naval forces of the United States, the action of said local board, as aforesaid, being pursuant to the power conferred upon said board' by the Selective Training and Service Act of 1940, and the amendments thereto, and the Rules and Regulations duly made pursuant thereto, did, knowingly, wilfully, unlawfully, and feloniously fail and neglect to report for induction, as aforesaid, as he was required to do by the notice and order of said board; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United [4] States of America.

F. E. FLYNN

[Endorsed]: Indictment A true bill, Sam W. Seaney Foreman.

[Endorsed]: Filed Jan 28 1943. [5]

In the United States District Court
for the District of Arizona

October 1942 Term

At Phoenix

MINUTE ENTRY OF
WEDNESDAY, FEBRUARY 17, 1943
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

C-6414

[Title of Cause.]

Frank E. Flynn, Esquire, United States Attorney
and James Walsh, Esquire, Assistant United
States Attorney, appear for the Government. The
defendant, Arley Virgle Tudor, is present in per-
son with his counsel Wm. H. Chester, Esquire and
now presents Motion to Quash Indictment. Ar-
gument is now had by counsel for the defendant,
and

It Is Ordered that said Motion to Quash Indict-
ment be and it is denied.

The defendant's plea is not guilty as charged in
the indictment, which plea is now duly entered, and

It Is Ordered that this case be set for trial March
23, 1943 at ten o'clock a. m. [6]

—

[Title of District Court and Cause.]

VERDICT

We, The Jury, duly empaneled and sworn in the
above-entitled action, upon our oaths, do find the

defendant Arley Virgle Tudor Guilty in the manner and form as charged in the indictment.

H. W. CHAMBERS,
Foreman.

[Endorsed]: Filed Apr 8 1943. [7]

In the United States District Court
For the District of Arizona
C-6414 Phoenix

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARLEY VIRGLE TUDOR,

Defendant.

JUDGMENT

Due proceedings having been had on the indictment filed herein presented against the defendant above named charging a violation of Title 50, United States Code, Section 311;

It Is Ordered, Adjudged and Decreed that said defendant is guilty of said crime and in punishment thereof that said defendant be committed to the custody of the Attorney General of the United States or his duly authorized representative for imprisonment in such place of confinement as the said Attorney General shall designate for a term of three (3) years;

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

Dated at Phoenix, Arizona, this 19th day of April, 1943.

DAVE W. LING
Judge

[Endorsed]: Filed Apr. 19, 1943. [8]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Offense: Violation of Title 50 U. S. C. Section 311 (Selective Training & Service Act)

Date of Judgment: April 19, 1943.

Brief Description of Judgment and Sentence: Verdict of guilty returned on April 8, 1943 of failing and neglecting to report for induction into the land or naval forces of the United States when notified so to do by his local Selective Service Board. Sentence of three years in Federal Penitentiary made and entered April 19, 1943.

Name of prison where confined if not on bail:
On bail.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned upon the grounds set forth below.

ARLEY VIRGLE TUDOR

Appellant

W. H. CHESTER

Attorney for Appellant [9]

GROUNDS FOR APPEAL

I.

That the verdict is contrary to law.

II.

That the verdict is contrary to the weight of evidence.

III.

That the Court erred in the decision of matters of law and evidence during the course of the trial.

IV.

That the Court erred in sustaining objections to evidence offered by Appellant during the course of the trial.

V.

That the Court erred in matters pertaining to procedure and evidence during the course of the trial.

VI.

That the Court erred in overruling objections to evidence offered by the United States Attorney during the course of the trial.

VII.

That the court has misdirected the jury on matter of law.

VIII.

That the Court erred in that Title 50 U.S.C. Section 311 as construed and applied by the trial Court violates the Fifth Amendment to the United States Constitution and deprives the Appellant of liberty and property without due process of law and without opportunity to be heard.

IX.

That Title 50 U. S. C. Section 311 as construed and as applied by the trial Court violates the First and Fourteenth Amendments to the United States Constitution, and deprives the defendant of freedom of religion and due process of law. [10]

X.

That Title 50 U.S.C. Section 311 as construed and applied by the trial court violates the Thirteenth Amendment to the United States Constitution, and under such construction it subjects the defendant to involuntary servitude.

Respectfully submitted

W. H. CHESTER

412 Phoenix Nat'l Bank
Bldg.

Phoenix, Arizona

Attorney for Defendant

Received April 19, 1943.

E. R. THURMAN

Asst. U. S. Attorney.

[Endorsed]: Filed Apr 19 1943 [11]

[Title of District Court and Cause.]

APPEAL BOND

United States of America

District of Arizona—ss.

Be It Remembered, that on this 19th day of April, 1943, the Honorable Dave Ling, Judge of the District Court of Arizona, personally came Ar-

ley Virgle Tudor, Principal and James Pazdera and Mildred Pazdera, his wife as surety and jointly and severally acknowledge themselves to owe the United States of America the sum of One Thousand Two Hundred Fifty and no/100 (\$1250.00) Dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the conditions hereinafter set forth.

Whereas, lately in the April, 1943 term of the District Court of the United States for the District of Arizona in a suit pending in said Court between the United States of America as plaintiff and Arley Virgle Tudor as defendant, a judgment and sentence was rendered against said Arley Virgle Tudor and said Arley Virgle Tudor has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and sentence in aforesaid suit, and notice of said appeal having been filed with the Clerk of the District Court of United States for the District of Arizona and a copy of said appeal served on the United States Attorney for the District of Arizona in manner and within time required by law and rules of court in such cases made and provided.

[12]

Now the Condition of This Recognizance is such that if Arley Virgle Tudor shall appear in the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, State of California on such day or days as may be appointed by said Court, and upon such day or days as may be appointed by said Court until finally discharged therefrom and shall abide by and obey all orders

of the Circuit Court of Appeals and surrender himself in execution of judgment and sentence of the District Court of the United States for the District of Arizona if said judgment against him shall be affirmed by the United States Circuit Court of Appeals for the Ninth Circuit and shall prosecute his appeal if he fails to make his appeal good, then the above obligation to be void, otherwise it shall be and remain in full force and effect.

And the surety or sureties in this obligation hereby covenants and agrees that in case of breach of any of the conditions of this bond, the United States District Court for the District of Arizona may upon notice to said surety or sureties of not less than ten days, proceed summarily in this cause to ascertain the amount of costs in the Circuit Court of Appeals for the Ninth Circuit, which said surety or sureties is bound to pay on account of such breach and render judgment therefor against said surety or sureties and to order execution therefor.

Judgment and sentence in this cause was entered on April 19, 1943 against Arley Virgle Tudor on a charge of having, on or about the 8th day of May, 1942, unlawfully and in violation of Section 311, Title 50 of the United States Code, failing to report for induction into the land or naval forces of the United States when notified so to do by his local Selective Service Board at Glendale, Arizona, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America. [13]

Sealed with our seal and dated this.....day of April, in the year of our Lord, 1943.

ARLEY VIRGLE TUDOR

Principal

Address

Surety—James Pazdera.

Address—1430 N. 45 East St. Louis Ill.

Surety—Mildred Pazdera.

Address—1430 N. 45 St. E. St. Louis, Ill.

Subscribed and sworn to before me this 17 day of April, 1943.

[Seal]

OSCAR L. BECKER,

County Clerk,

By THOMAS F. COOMAN,

Deputy

Approved this 19 day of April, 1943.

DAVE W. LING [14]

United States of America

District of Illinois—ss.

James Pazdera, whose name is subscribed to the foregoing instrument and undertaking as one of the sureties thereof, being first duly sworn, deposes and says: That I am a freeholder in said district and reside at No. 1430 N. 45th Street, East St. Louis, Illinois, and by occupation Forman Armour & Co. E. St. Louis, Ill.

That I am worth the sum of One thousand Two Hundred Fifty and no/100 (\$1250.00) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and lia-

bilities and exclusive of property exempt from execution, and that my property now standing of record in my name, consists in part as follows: Real estate consisting of:

All of Lot 171, Block 22, Plat Town of Illinois City, Recorded in Record E on page 301 and 302 except the Northwesterly 55.45 feet and except the Southeast 21 feet thereof, St. Clair County, Illinois, East St. Louis Illinois.

That the encumbrances on the foregoing property are as follows: None except that I am now on Bond of Arley Virgil Tudor for trial in District Court of the United States of America for the District of Arizona, which bond expires at the time of, or prior to the time this bond is approved.

That my total net assets, above all liabilities and obligations on other bonds, is the sum of \$7000.00.

That I am not surety upon outstanding penal bonds, now in force except on bond of Arley Virgil Tudor, which bond expires at the time this bond takes effect.

JAMES PAZDERA

Subscribed and sworn to before me this 17 day of April, 1943.

United States Commissioner
for the District of Illinois.

At.....

[Seal]

OSCAR L. BECKER,

County Clerk,

By THOMAS F. COOMAN,

Deputy. [15]

United States of America

District of Illinois—ss.

Mildred Pazdera, whose name is subscribed to the foregoing undertaking as one of the sureties thereof, being first duly sworn, deposes and says: That I am a freeholder in said district and reside at No. 1430 N. 45th Streed, East St. Louis, Illinois, and by occupation a housewife.

That I am worth the sum of One Thousand Two Hundred Fifty and no/100 (\$1250.00) Dollars, the sum in the said undertaking specified as the penalty thereof, over and above all my debts and liabilities and exclusive of property exempt from execution, and that my property now standing of record in my name, consists in part as follows: Real estate consisting of:

All of Lot 171, Block 22, Plat Town of Illinois City, Recorded in Record E on page 301 and 302 except the Northwesterly 55.45 feet and except the Southeast 21 feet thereof, St. Clair County, Illinois, East St. Louis, Illinois.

That the encumbrances on the foregoing property are as follows: None except my interest is as wife of James Pazdera who also signed this bond and except that I am now on bond of Arley Virgil Tudor for trial in District Court of the United States of America for the District of Arizona, which bond expires at the time of, or prior to the time this bond will be filed and approved.

That my total net assets, above all liabilities and obligations on other bonds, is the sum of \$7000.00.

That I am not surety upon outstanding penal

bonds, now in force except on bond of Arley Virgil Tudor, which bond expires at time this bond takes effect.

MILDRED PAZDERA

Subscribed and sworn to before me this 17 day of April, 1943.

 United States Commissioner
 for the District of Illinois
 At.....

OSCAR L. BECKER,
 County Clerk,
 By THOMAS COOMAN,
 Deputy. [16]

[Endorsed]: Filed Apr 19 1943. [17]

 In the United States District Court
 for the District of Arizona

April 1943 Term

At Phoenix

MINUTE ENTRY OF
 SATURDAY, MAY 15, 1943
 (Phoenix Division)

Honorable Dave W. Ling, United States District Judge, Presiding.

C-6414

[Title of Cause.]

James A. Walsh, Esquire, Assistant United States Attorney, appears as counsel for the Government. Wm. H. Chester, Esquire, is present on behalf of the defendant. On motion of said counsel for the defendant,

It Is Ordered that defendant's time to file Bill of Exceptions herein be extended to and including June 9, 1943. [18]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered that in the District Court of the United States, for the District of Arizona, the Honorable Dave W. Ling, Judge of said Court presiding, and Frank E. Flynn appearing as attorney for the plaintiff and W. H. Chester appearing as attorney for the defendant, the following proceedings were had:

That on the 17th day of Feby. 1943, the defendant filed the following Motion to Quash Indictment:

“(Title of Court and Cause)

Comes now the defendant above named and moves the Court to quash the indictment filed in the above entitled cause for the following reasons:

I.

That the indictment fails to state that the action of the Glendale, Arizona local selective service board acted in accordance with the rules and regulations of the Selective Service System.

II.

That the indictment fails to state that the defendant was subject to the orders made by the Glendale, Arizona local selective service board and

does not state facts sufficient to constitute a crime or offense.

W. H. CHESTER.

Attorney for Defendant.

412 Phoenix Nat'l Bank Bldg.

Phoenix, Arizona. [19]

POINTS AND AUTHORITIES

There are no facts alleged in the indictment to show that the defendant was required under the provisions of the Selective Service Act to report for combatant training. The U. S. Code Annotated, Book 50, Section 303 (g) provides "Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief is conscientiously opposed to participation in war in any form.

50 U.S.C.A. Sec. 303 (g)

Every fact necessary to constitute the crime charged must be directly and positively alleged and nothing can be charged by implication or intendment.

U. S. v Britton, 107 U.S. 655.

U.S. v Cruikshank 92 U.S. 542.

Commission from the indictment of any fact or circumstance necessary to constitute an offense will be fatal.

Harris v. U.S. 104 Fed (2nd) 41.

Indictment is so indefinite and uncertain that the

defendant cannot properly raise the Constitutionality of the Statute and is so indefinite and uncertain as not to provide a reasonable standard of guilt or innocence.

Indictment is in contravention of the 5th and 13th Amendments to the Constitution of the United States of America.

W. H. CHESTER,

Attorney for Defendant.

412 Phoenix Nat'l Bank Bldg.

Phoenix, Arizona.

That on the 17th day of February, 1943, said motion came on to be heard and on the 17th day of February, 1943, the Honorable Court entered its order denying said motion to quash the indictment.

That on the 8th day of April, 1943, upon the trial of said cause

THOMAS B. RIORDAN

was called as a witness on behalf of the plaintiff and testified as follows: [20]

Q. What is your business or occupation?

A. I am clerk of the Selective Service Board at Glendale.

Q. Who has custody of the records and papers belonging to the Board? A. I do.

Mr. Walsh: May this be marked?

(The document was marked as Plaintiff's exhibit 1 for identification)

Mr. Walsh: Q. Mr. Riordan, I hand you Government's Exhibit No. 1 for identification, and ask

(Testimony of Thomas B. Riordan.)

you if that is part of the records of your local Board No. 6? A. Yes, sir.

Q. Can you tell from looking at it on what date it was received by the Board?

A. No, I can't tell the exact date it was received, no, sir.

Q. Well, what is this notation here, (indicating on document)?

A. Well, that is the approximate date. At the time we received these cards they were shuffled and each man given a serial number, and after that was—the cards were serial numbered and then we put the dates—went through and put the dates on the cards. This card bears date of October 21st, 1940, however, we probably received that card several days prior to that date, but in handling and serial numbering it and everything, it took several days to do that.

Q. And since the date of its receipt has it been in the possession and custody of the Board?

A. It has.

Q. Is it regularly required by the Selective Service regulations to be kept by the Board?

A. Yes sir.

Mr. Walsh: We offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit No. 1 in evidence)

Which document so proposed and offered in evidence by plaintiff is as follows:

(Testimony of Thomas B. Riordan.)

GOVERNMENT'S EXHIBIT 1 IN EVIDENCE

“Gen Del McLeansboro, 111 “No” 4/20/42

Serial Number 3033 ARLEY VIRGIL TUDOR
Order No 156 Address Route #1 Box 349, Glendale,
Mara. Arizona. Age in years 31. Place of Birth
Van Burn, Ark. [21]

Country or Citizenship. U.S. Date of Birth Dec 23,
1908. Name of person who will always know your
address Mrs. Grace Irene Tudor, Relationship wife.
Address of that person Route # 1 Box 349, Glen-
dale, Mara., Ariz.

Employer's Name. Arena Notron, Inc. Place of
Employment or business Phoenix, Maricopa
County, Arizona.

I affirm that I have verified above answers and
that they are true.

ARLEY V. TUDOR

(Back side of Card)

Description of Registrant

Race, White—Height 5'10" Weight 170 Complexion
Dark. Eyes Brown, Hair Brown, Other obvious
physical characteristics that will aid in identifica-
tion—Small scar on right wrist.

Signed by Registrar Chas E. Minecks, Jr.”

And the said Thomas B. Riordan testified for
the plaintiff further as follows:

Mr. Walsh: Q. Mr. Riordan, referring to the
address given on this card, “Route 1, Box 349,

(Testimony of Thomas B. Riordan.)

Glendale, Maricopa County, Arizona", is that within the territory over which your local board has jurisdiction? A. Yes sir.

Q. And referring to the number printed in red at the top of the card, what significance does that red number have?

A. That is the man's order number.

Q. And what relation or bearing does that order number have with reference to a man's questionnaire?

A. Well, the questionnaires are sent out numerically according to the order number. The files and the classification record is made up in numerical order according to a man's order number and we start with Order Number 1, send out the questionnaire to—in numerical order from thereon.

Q. Does the man's file in all proceedings retain that order number all the way through?

A. Yes, sir.

Mr. Walsh: May this be marked?

(The document was marked as Government's Exhibit No. 2 for identification) [22]

Mr. Walsh: Mr. Riordan, I hand you Government's Exhibit No. 2, for identification, and ask you if that paper is a part of the records of your Local Board No. 6 at Glendale? A. Yes, sir.

Q. Can you examine it and determine when it was received by the Board?

A. I would have to refer to my classification record to determine the date of mailing and the date it

(Testimony of Thomas B. Riordan.)

was received. I could not tell from this the date we received it.

Q. Is that the book which you have here?

A. Yes, sir.

(The book was handed to the witness)

The Witness: The questionnaire was mailed on November 5th, 1940, and was received by us on November 22nd, 1940.

Q. Has that document been in the possession and custody of the Board since its receipt on November 22nd? A. Yes, sir.

Q. And is it a record required to be kept by the Selective Service Regulations? A. Yes, sir.

Mr. Chester: There are two objections to this questionnaire, your Honor. One is that it has never been sworn to as provided within the rules and regulations, and the second is that the classification substituted.

Mr. Walsh: So far as the alteration of the classification is concerned, your Honor, I think their *altering* the date is in accordance with the regulations of the Selective Service System. It is my understanding that when a classification is changed, the proper way to do it is to run through the original classification and then endorse on the questionnaire the new classification, *and then endorse on the questionnaire the new classification.*

The Court: Why, I think that would be all right. What about the other? Does that have to be sworn to?

Mr. Walsh: I think that is a matter which is up to the Board. If they want to insist upon it, they

(Testimony of Thomas B. Riordan.)

probably would require it, but I don't understand and can't understand why a defendant would be entitled to file a questionnaire without swearing to it and then attempt to claim he did not file the questionnaire because he had not sworn to it. [23]

Mr. Chester: Do you have any Selective Service Rules and Regulations in regard to that matter?

The Witness: No sir.

Q. The questionnaires are required, under the law, to be sworn to, are they not?

A. I don't think it is mandatory, no, sir.

Mr. Chester: Mr. Flynn, do you have a copy of the Section?

Mr. Flynn: I haven't it here.

Mr. Chester: I wonder if you could get one up.

The Court: Well, I will admit it now. You can look that up. It may be received now.

(The document was received as Government's Exhibit 2 in evidence)

Thereupon the following paper was offered and proposed in evidence by the plaintiff

GOVERNMENT'S EXHIBIT No. 2
IN EVIDENCE

(This exhibit being a selective service questionnaire of *Jarmon Conway*, gives the following answers to the questions therein in substantially the form as follows:

Order No. 156; Name *Arley Virgil Tudor*,

(Testimony of Thomas B. Riordan.)

Address RFD #1 Box 349, Glendale, Maricopa, Arizona.

My name is Arley Virgle Tudor.

My residence is R 1 Box 349, Maricopa (County) Arizona.

My telephone number is Glendale.

My social Security number is 526-10-4946.

I have physical or mental defects or diseases. My back is defected.

I am not an inmate of an institution.

I have completed nine years of elementary school and none years of high school.

I am working at present.

The job I am working at now is. Farm Labor.

I do the following work in my present job.

Tractor operator.

I have done this kind of work for 8 years.

My average weekly earnings in this job ar \$15.00

In this job I am (x) an employee, working for salary, wages, commission, or other compensation.

My employer is: Stanley Fruit Co. Phoenix, Arizona.

Lat 221½ & J. Avenue, whose business is Farming.

I am not licensed in a trade or profession.

I am not at present an apprentice under a written or oral agreement.

Other facts which I consider necessary to present fairly the occupation which I have described or my connection with it, as a ground for classification are Conscientious objector. [24]

(Testimony of Thomas B. Riordan.)

I have farmed for 15 years. I do not live on the farm with which I am connected.

I am not actually and personally responsible for the operation of the farm on which I work.

The principal crops and livestock of the farm I operate or work on are:

Lettuce 1100 acres; carrots, beets, 100 acres; 400 acres, Carrots 80 acres; Beef cattle, Hogs, I don't know number now on farm.

The number of hands employed on this farm is 24.

I am (x) Married. I married my present wife at Florence, Arizona on April 6, 1940. I do live with her.

I have four (4) children who are under 18 years of age or are physically or mentally handicapped.

Name	sex	age	relationship	date support began
Roy L. Tudor	male	11	son	March 7, 1929
Letha Davies	female	11	step daughter	April 2, 1940
Leo Davis	Male	13	step son	April 2, 1940
Patsy Davis	female	3	step daughter	April 2, 1940.
Grace Tudor	female	42	wife	April 2, 1940
Ella Tudor,	female	mother		56 1/1/30

The net cost to me for maintaining my home during the last 12 months after deducting all I could make contributed by other than myself for the support of such dependents was \$.....

The cause of the dependency of any person 18 years of age: My mother is disable she has high blood pressure.

List of property

Grace Tudor	Home	\$700.00 net income none
-------------	------	--------------------------

(Testimony of Thomas B. Riordan.)

I was born at Fortsmith, Ark., Crofford. (County)

I was born on December 23, 1908.

My race is white;

I am a citizen of the United States.

I x claim the exemption provided by the Selective Training and Service Act of 1940 for conscientious objectors because I am conscientiously opposed, by reason of my religious training and belief to the type or types of service checked below :

(Put X in the correct box or boxes)

X Combatant military service.

I have not been convicted of treason or felony.

Signed by Arley Virgle Tudor, Nov. 19, 1940.

(Not signed by officer or official administring oath)

[25]

Thereafter Witness Thomas B. Riordan testified as follows:

Mr. Walsh: Q. Referring to Government's Exhibit No. 2 in evidence, Mr. Riordan, can you tell us generally what that document is: just describe it.

A. This document is what is called the Selective Service Questionnaire. This is mailed to the registrant and he, in turn, has ten days in which to fill out and complete the answers in the questionnaire and return it to us. He gives all of the information on here that is asked, and from this questionnaire the local board classifies the registrant. In other words, they determine from the answers to the question in

(Testimony of Thomas B. Riordan.)

the questionnaire what class the registrant is entitled to be put in.

Q. From the Minutes to which you have just referred can you tell us what classification the defendant Tudor received from the Local Board No. 6?

A. At the first time this man was classified, was on November 26th, 1940. At that time the defendant was placed in Class 3-A, due to the fact he was a married man and had children. Subsequent to his classification we received, or I received word that the man was not taking care of his wife and children and was not living with them. I received that—

Mr. Chester (Interrupting) Your Honor, I object to that testimony as hearsay.

The Court: Who did you receive that from?

A. I received that from Mrs. Tudor, the man's wife.

Mr. Chester: The best testimony about that would be from Mrs. Tudor. It is purely hearsay evidence here.

The Court: Yes, that is true.

Mr. Walsh: I think, myself, Your Honor, that the witness should confine himself to receiving certain information which he conveyed to the Board.

The Court: Yes.

Mr. Walsh: Q. Was he subsequently reclassified from 3-A?

A. He was, he was reclassified on September 30th, 1941. At that time we had Rules and Regulations that came out that all men who were over the age of 28 years of age should be classified in 1-H so when the

(Testimony of Thomas B. Riordan.)

registrant Tudor's file came up for reclassification, we found he was over 28 years of age. As I say, that was on September 30th, 1941, so he was placed in Class 1-H. Subsequent to the Declaration of War, we received new Rules and Regulations stating that all men——

Mr. Chester: (Interrupting) Your Honor, I object, [26] to the question or the answer. The rules and regulations should speak for themselves, and this matter as to what the Rules and Regulations contained, I don't believe that the Member here is qualified to testify as to those Rules and Regulations.

Mr. Walsh: I submit he certainly is, your Honor. He is the Clerk of the Board, an executive officer of the Board and certainly he is entitled to testify as to what are the general present regulations and what the regulations were.

Mr. Chester: What was done pursuant to the regulations may be testified to, your Honor, but I believe as to what the regulations were is a matter of evidence where the rules will speak for themselves. It is not the best evidence.

Mr. Walsh: As far as that is concerned, the Court will take judicial notice of the Regulations.

The Court: Well, they would have the same effect as the Statute itself.

Mr. Chester: What is that?

The Court: I say, the Rules and Regulations have the same force and effect as the Statute?

Mr. Chester: That is correct.

The Court: All right. Now, if you are dissatisfied

(Testimony of Thomas B. Riordan.)

with the way they did, you can show the Court the rule and say they didn't follow it.

Mr. Chester: Well, the Statute itself—testifying as to what the law is or what the rule is, certainly is not the best evidence. The rule itself and the Statute itself is the best evidence.

The Court: It may be so, that part of it, but he can testify as to what they did.

Mr. Chester: He can testify as to what they did, but not as to what the Rules and Regulations are. These Rules and Regulations are not a matter of public property. They are hard to get. They are more or less private property for the Boards themselves, so we never know what the Rules and Regulations are.

The Court: Well it is a public document. Go ahead and testify.

The Witness: We received these new Regulations stating that all men classified in 1-H should be reclassified in Class 1, so—

Mr. Chester (Interrupting) Your Honor, I again object to this.

The Court: all right, let the record show your objection. Go ahead.

Mr. Chester: And an exception. [27]

Mr. Walsh: May this be marked, please?

(The document was marked as Government's Exhibit 3 for identification)

Mr. Walsh: Q. Mr. Riordan, I hand you Government's Exhibit 3 for identification, and ask you if

(Testimony of Thomas B. Riordan.)

that is a part of the records of your Board in this case? A. Yes; it is.

Q. And it is a record required by the Regulations of the Selective Service to be kept by your Board?

A. Yes; it is.

Mr. Walsh: I offer it in evidence.

Mr. Chester: No objections. At this time, your Honor, I'd like to receive an exception to the introduction in evidence to the questionnaire itself.

The Court: All right.

(The document was received as Government's Exhibit 3 in evidence)

Being as follows:

GOVERNMENT'S EXHIBIT No. 3
IN EVIDENCE

Report of Physical Examination:

Name, Tudor, Arley Virgle, Order No. 156, Race, White.

Occupation Farm Laborer.

Address: General Delivery, McLeansboro, Hamilton County, Illinois, Rural. Mother tongue, English.

Birthplace, Fortsmith, Arkansas, Birthdate December 23, 1908.

Statement of Person Examined.

Have you had any experience in CCC work? Yes.

Do you consider that you are now sound and well
No.

What illness, disease, or accidents have you had since Childhood? Pneumonia, 1940

(Testimony of Thomas B. Riordan.)

Have you ever had any of the following? If so give dates; Spells of unconsciousness, convulsions, or fits? No. Gonorrhoea No. Sore Penis No

Are you addicted to the use of habit forming drugs or narcotics? No. Have you ever raised or spat up blood. No.

When were you last treated by a physician, and for what ailment. Pneumonia, 1940.

Have you ever been treated at a hospital or asylum? No.

Signed by Arley V. Tudor.

This local Board finds that the person named above is:

Qualified for general military service

Date 2/13/42 J. F. BRAZILL. [28]

Thereafter witness Thomas B. Riordan, testified for the plaintiff further as follows:

A. Subsequent to this examination the defendant was called for an Army examination at the induction station in Phoenix.

Q. And did you get a report of that examination?

A. And we got a report of that examination; yes, sir.

Mr. Walsh: May this be marked?

(The document was marked as Government's Exhibit No. 4 for identification)

Mr. Walsh: Q. I hand you Government's exhibit No. 4 for identification, *as* ask you if that is the report of which you have reference to?

(Testimony of Thomas B. Riordan.)

A. Yes; it is.

Mr. Walsh: I offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit 4 in evidence)

Which Exhibit so proposed and offered by Plaintiff is as follows:

GOVERNMENT'S EXHIBIT No. 4
IN EVIDENCE

Report of Induction of Selective Serviceman
Name, Tudor, Arley Virgle.

Address Phoenix, Maricopa, Arizona. Mother
Tongue English

Birthplace Fort Smith, Arkansas. Birth date Dec
23, 1908.

Age 33 years 2 months. U. S. Citizen Yes. Race,
white.

Grade completed in grammar school 6;

Duty with CCC no.

Civilian trade or occupation; Farm laborer, years
so engaged 20; weekly wage \$20.00

Marital status, married, Dependents; one-son.

Previous service in United States Military or naval
service, Marine Corps, Coast Guard, or National
Guard in any active, inactive, or reserve status; none.

Physical Examination:

1. Eye abnormalities none
2. Ear, nose, throat abnormalities none
3. Mouth and gum abnormalities none
4. Teeth

(Testimony of Thomas B. Riordan.)

5. Skin acne, slight.
6. Varicose veins none
7. Hernia none
8. Hemorrhoids none
9. Genitalia normal.
10. Feet normal
11. Musco-skeletal defects none
12. Abnormal viscere normal [29]
13. Cardiovascular system normal
14. Lungs, including X-ray if make, normal
15. Nervous system reflexes pupillary normal
Patellary normal
16. Endocrine Disturbances none
17. Results of laboratory examinations, when made Klein—Neg.
18. Remarks on defects not sufficiently described none
19. Summary of defects in order of importance, impression of physical fitness none
Vision Right eye 20/20 Left eye 20/20
Hearing Right ear 20/20 Left ear 20/20
Height 67 in.
Weight 168
Girth (at nipples: Inspiration 42 in; Expiration 39 in.
Girth (at umbilicus 33 in.
Posture good
Frame medium
Color of hair brown.
Color of eyes brown
Complexion ruddy

(Testimony of Thomas B. Riordan.)

Pulse: Sitting N.R. After exercise N.R.

2 min after exercise N.R.

Blood pressure; Systolic N.R. Diastolic N.R.

Urinalysis Sp gr. 1.020. Albumin neg. Sugar Neg

Microscopic N.R. other data none.

Signed by L. J. Fielding. 1st Lt. M.C.

Thereafter witness Thomas B. Riordan, testified as follows for the plaintiff:

Mr. Walsh: Mark this, please

(The document was marked as Government's Exhibit 5, for identification)

Mr. Walsh: Q. I show you Government's Exhibit 5 for identification, and ask you if that is a part of the records of Local Board No. 6?

A. Yes, sir it is.

Q. Can you tell us whose signature appears at the bottom of it?

A. That is the signature of J. S. Brizill, the Chairman of Local Board No. 6.

Q. Directing your attention to the envelope attached to the sheet, do you know whether or not that was ever placed in the mail?

A. Yes, sir, it was.

Q. And enclosed in this envelope?

A. Yes, sir.

Mr. Walsh: I offer it in evidence. [30]

Mr. Chester: No objection.

(Testimony of Thomas B. Riordan.)

(The document was received as Government's Exhibit No. 5 in evidence)

Which said exhibit proposed by plaintiff is as follows:

GOVERNMENT'S EXHIBIT No. 5
IN EVIDENCE

Order to Report for Induction.

The President of the United States
To Arley Virgle Tudor, Order No. 156.

Greeting:

Having submitted yourself to a local Board composed of your neighbors for the purpose of determining your availability for training and service in the armed forces of the United States, you are hereby notified that you have now been selected for training and service in the Army.

You will, therefore report to the Local Board named above at 213 E. Glendale Av., Glendale, Ariz., at 6:30 a.m., on the 3rd day of April (Friday) 1942.

This Local Board will furnish transportation to an induction station of the service for which you have been selected. You will there be examined and if accepted for training and service, you will then be inducted into the state branch of the service.

If you are not accepted, you will be furnished transportation to the place where you reported. Willful failure to report promptly to this Local Board at the hour and on the above named day in this notice is a violation of the Selective Training and

(Testimony of Thomas B. Riordan.)

Service Act of 1940 and subjects the violator to fine and imprisonment. Bring with you sufficient clothing for 3 days.

You must keep this form and take it with you when you report to your Local Board.

J. F. BRAZILLE,

Member of Local Board.

(attached is envelope as follows:

Selective Service,

Official Business. (P.O. Stamp dated Mar 23, 1942)

Important Orders

ARLEY VIRGIL TUDOR,

Gen Del

Phoenix, Arizona.

If not delivered in 5 days return to Local Board No. 6, Maricopa County 213 E. Glendale Ave. Glendale, Arizona.

Mar 29, 1942.

(Selective Service Stamp) [31]

Thereafter Witness, Thomas B. Riordan testified for the Plaintiff as follows:

Mr. Walsh: May I have this marked as one exhibit?

(The documents were marked as Government's Exhibit 6 for Identification)

Q. Can you tell us when the respective cards were received:

A. One card was received on April the 20th, 1942, and the other card was received on April 25th, 1942.

(Testimony of Thomas B. Riordan.)

Mr. Walsh: We offer them in evidence.

Mr. Chester: No objection.

(The documents were received as Government's Exhibit 6 in evidence)

Which exhibit so proposed by plaintiff is as follows:

GOVERNMENT'S EXHIBIT No. 6
IN EVIDENCE

One Postal Card:

(Postmarked McLeansboro, Ill,
Apr. 16, 1942.

Local Board No. 6,
Glendale Arizona.
E Glendale Ave.
(on reverse side)

Sending you my address. Arley Tudor, McLeansboro, Gen Del, Illinois. Arley Virgle Tudor, Order Number 156. 4-20-42

One Postal Card:

(Postmarked McLeansboro, Ill,
Apr 25, 1942.

Via Air mail

Maricopa County Local Board,
Glendale, Arizona.
East Gledale Ave.

(on reverse side)

Will send you another card concerning my address. this is two I have sent you. Arley V. Tudor, No. 156, McLeansboro, Illinois, Gen Del

(Marked in red ink #352 4-27-42 A.N. [32])

(Testimony of Thomas B. Riordan.)

Thereafter Witness Thomas B. Riordan testified for the plaintiff as follows:

Mr. Walsh: Q. Mr. Riordan, subsequent to the receipt by your Board of the two cards which have just been admitted in evidence, was any additional order to report for induction addressed to the defendant Tudor? Yes, sir.

Mr. Walsh: Mark that.

(The document was marked as Government's Exhibit 7 for identification.)

Mr. Walsh: Q. I hand you Government's Exhibit No. 7 for identification, and ask you if that is the order about which you have reference?

A. Yes; it is.

Q. And whose signature appears at the bottom of it?

A. That is the signature of J. S. Brizill, Chairman, Local Board No. 6, Glendale, Arizona.

Mr. Walsh: I offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit No. 7, in evidence.)

Which said exhibit so proposed by plaintiff is as follows:

GOVERNMENT'S EXHIBIT No. 7,
IN EVIDENCE

Order to Report for Induction

To Arley Virgil Tudor, Order No. 156.

You will, therefore, report to the local Board

(Testimony of Thomas B. Riordan.)

named above 213 E. Glendale, Ave., Glendale, Arizona, at 6:30 a. m., on the 8th day of May, (Friday; 1942.

Signed by J. F. Brazill, Member of Local Board.
(with following notation below signature)

If it is impossible for you to return to Glendale, go to the nearest local board Immediately upon receipt of this notice and request transfer. [33]

Thereafter witness, Thomas B. Riordan testified as follows for the Plaintiff.

Q. Do you recall, Mr. Riordan, to what address Government's Exhibit No. 7 was addressed and mailed?

A. It was addressed to this McLeansboro, Illinois, address, the last address that we received from him.

Q. You heard nothing from him?

A. No, sir.

Mr. Walsh: May this be marked, please?

(The document was marked as Government's Exhibit 8 for identification.)

Mr. Walsh: Q. I hand you Government's Exhibit 8 for identification, Mr. Riordan, and ask you whose signature appears thereon.

A. That is the signature of J. S. Brazill, Chairman, Local Board No. 6, Glendale, Arizona.

Q. And is that document a part of the records of your Board in this case?

A. Yes; it is.

Mr. Walsh: I offer it in evidence.

(Testimony of Thomas B. Riordan.)

Mr. Chester: No objection.

(The document was received as Government's Exhibit 8 in evidence.)

Which exhibit so proposed by plaintiff is as follows:

GOVERNMENT'S EXHIBIT No. 8,
IN EVIDENCE

Notice (to Registrant) of Suspected Delinquency
To Arley Virgle Tudor.

Dear Sir:

According to information in possession of this Local Board, you failed to perform the duty, or duties imposed upon you under the selective service law as specified below.

(X) You Failed to Report for Induction on May 8, 1942, nor did you request a transfer as instructed. Order to Report Notice was not returned to us. You had also failed to report for induction on April 3, 1942.

You are therefore directed to report, by mail, telegraph, or in person, at your own expense, to this Local Board, on or before 2:00 o'clock P. M. on the 31st day of May, 1942. [34]

Failure to report on or before the day and hour is an offense punishable by fine or imprisonment, or both.

(Signed) J. F. BRAZILL,
Member of Local Board.

(Testimony of Thomas B. Riordan.)

Thereafter Witness Riordan testified as follows for plaintiff:

Mr. Walsh: May this be marked, please?

(The document was marked as Government's Exhibit 9, for identification.)

Mr. Walsh: We offer it in evidence.

Mr. Chester: No objection.

(The document was received as Government's Exhibit 9 in evidence.)

Which exhibit so proposed by plaintiff is as follows:

GOVERNMENT'S EXHIBIT No. 9
IN EVIDENCE

Classification Record.

1. Order No. 156. 2. Name of Registrant—Arley Virgle Tudor. 3. Serial Number 3033 4 age 31. 5. Race—Wh. 9. Date questionnaire mailed 1-15-40. 11 Date questionnaire returned—11-2-40. Classification 1-A. 15 Date Registrant Appeared for Physical examination Feb. 5, 1942. 16 Date Classification by Local Board mailed to Registrant. 2-13-42, 11-28-40, 10-2-41. 24. Date of order to report for induction—3-23-42 marked through 4-21-42.

25. Time Fixed for Registrant to report for transportation to Induction Station 5-8-42 6:30 p m, 4-3-42 6:30 p.m. (marked through)

27 Remarks: Reported to U. S. Atty. 7-10-42.
28 Order number 156.

(Insert page attached)

23A Date notice mailed to appear for physical

(Testimony of Thomas B. Riordan.)

examination by Armed forces 2-24-42. Under column with blank heading 6-18-42.

Thereafter witness, Thomas B. Riordan testified as follows:

Mr. Walsh: Q. I hand you Government's Exhibit 9 in evidence, Mr. Riordan, and ask you if you will explain what the various entries on that document mean?

A. The first entry, 156, is the man's order number. That is followed by his name, Arley Virgle Tudor, and then his serial number 3033; age 31; race, White; date questionnaire mailed, 11-15-40; date questionnaire returned, 11-22-40; classification 1-A. Date registrant appeared for physical examination was February [35] 5th, 1942. Date classification by Local Board mailed to registrant, the first one was mailed on November 28th, 1940; the second one was mailed on October 2d, 1941 the third was mailed on February 13th, 1942. Date ordered to report for induction, the first order to report was mailed on March 23, 1942. The time fixed for registrant to report for transportation to induction station, date was April 3d, 1942, at six-thirty P.M. The second order to report was mailed April 21st, 1942, and the time fixed for the registrant to report for transportation to induction station was May 8, 1942, at six-thirty, P.M., and then in the next column under "Remarks, including information on appeals to President" and so forth, is marked: "Reported to United States Attorney 7-10-42" and then his order number appears again "156"

(Testimony of Thomas B. Riordan.)

Q. And the balance of the sheet?

A. And on this supplemental sheet is the date notice mailed to appear for physical examination by the armed forces was on February 24th, 1942, and the other date, June 18th, 1942 was the date that he mailed his occupational questionnaire to him, and that was never returned.

Thereafter, Witness

ANITA D. STODDARD

was sworn and testified on behalf of plaintiff as follows:

A. I am with the Selective Service Board as Assistant Clerk.

Q. And what particular board?

A. Board No. 6 Glendale.

Q. Do you recall, Mrs. Stoddard, the time when the defendant Tudor's final physical examination was received by the Board there at Glendale?

A. Yes Sir.

Q. What conversation did you have with him at that time?

A. Well, he told me that he had passed his Army examination and I said it would only be a matter of two or three weeks before he would be called for induction, and if so, what would be his address, and then he gave me his changed address of General Delivery at Phoenix. [36]

Thereafter the following proceedings were had:
Mr. Walsh: The Government rests:

Mr. Chester: At this time, your Honor, I'd like to make a motion and I believe that it should be made without the presence of the jury.

The Court: All right. Retire from the court room. Keep in mind the Court's admonition. Just remain out in the corridor.

(Thereupon the jury retired from the Court room.)

Mr. Chester: Your Honor, so far as I can see, the ruling of the Selective Service Board in this case, especially where they had notice that the man was a conscientious objector, was arbitrary and capricious, and they ignored their own Rules and Regulations and the laws of the Selective Service System itself. The classification, therefore, was a wrongful classification. It was not correct, at any rate, and they failed to go into the matter in a hearing as to whether or not his claim as a conscientious objector could be substantiated. There was no evidence taken so far as the testimony of Mr. Riordan is concerned, one way or the other.

Now, the exhibits that are before the Court, none of them have been properly tied up to the defendant. There is no one here who has stated that he knew that this was the defendant's signature. The questionnaire is not sworn to.

Now, the opinion No. 14 of the Selective Service System states that conscientious objectors should be treated in a certain way, which this Board has not done, and their Rules and Regulations provide for special treatment for conscientious objectors.

Conscientious objection is something that rests within the man's mind, and I believe that without a hearing and without going into the matter to show that the whole thing is before the Board, that they cannot properly classify him either as a conscientious objector or not a conscientious objector, but that it should be determined upon a fair hearing wherein they should consider both sides of the case. I move, therefore, that the case be dismissed.

The Court: Well, the defendant didn't do what he was required to do under the Regulations. In order to get that before the Board he should have filled out form 47, which he did not do. The motion is denied. Call the jury. [37]

Thereafter, Defendant

ARLEY VIRGLE TUDOR

was sworn and testified in his own behalf as follows:

Mr. Chester:

Q. Will you state your name, Mr. Tudor?

A. Arley Virgle Tudor.

Q. You are the defendant in this case?

A. Yes, sir.

Q. Where do you live?

A. I live in McLeansboro, Illinois.

Q. And what is your occupation?

A. I have been working in the oil fields there. My occupation is a farmer.

(Testimony of Arley Virgle Tudor.)

Q. And did you receive any orders from the Glendale Draft Board, I think it was in April, 1942?

A. I received an order for induction along about that time, but I am not positive of the day.

Q. Did you appear for induction?

A. I did not.

Q. Will you tell the Court why you did not appear for induction?

A. When I filled out my questionnaire I put it on there in two different places that I was a conscientious objector and I didn't really think it would be in any one—any human creature's power to tell whether or not I am a conscientious objector, and without me telling them that I am one, I don't know how they would understand that I am, and that is the reason I didn't report for induction in the United States Army.

Q. And to what faith do you belong?

A. I am Jehovah's Witness, Witness of the Jehovah God.

Q. Now, in that faith, what is the attitude toward participation in armed combat?

A. Well, the Almighty says that there will be no place in the Kingdom of God for murder, and he put the human creatures here on earth and they belonged to Him and I don't feel that it is up to me to destroy them. He says He will, when the time comes, and so far it has not come, but according to the Scriptures, it will be in the near future.

Q. Now, prior to the time that you were noti-

(Testimony of Arley Virgle Tudor.)

fied, do [38] you recall what classification you had in the Selective Service System?

A. You mean at the time of—that I got the report for induction? Q. Yes.

A. Well, according to what I received before my examination was 1-A.

Q. At the time you received that, did you have any dependents?

A. Yes, I had my mother and son, fourteen years old.

Q. Were they with you?

A. They were with me.

Q. How old is your mother?

A. She is fifty eight.

Mr. Flynn: I object to that, your Honor, that is no defense; immaterial and not within the purview of the issues.

The Court: The objection is sustained.

Thereafter

ELLA TUDOR

was called as a witness on behalf of defendant, and being first duly sworn, testified as follows:

Mr. Chester:

Q. Will you state your name?

A. My name is Ella Tudor.

Q. What relation are you to the defendant?

A. I am his mother.

Q. And do you live with the defendant?

(Testimony of Ella Tudor.)

A. Not since the law has been dragging him around. Until then I did.

Q. But until that time you did?

A. Yes, sir.

Q. Did you work? A. Me?

Q. Yes.

A. We both worked. We are supposed to work.

Q. What work did you have? [39]

A. I did housework. I worked for him, kept house.

Q. Kept house for him? A. Yes.

Q. And was there any others in the family?

A. His son—my grandson.

Q. How old is he? A. Thirteen.

Q. Does he live with you and Mr. Tudor?

A. He lives with me and his father.

Q. Up until the time he was brought back from Illinois? A. Until he was arrested.

Q. The son does not work, does he?

A. Sir?

Q. The son does not work, does he, the boy, does he work? A. The little boy?

Q. Yes.

A. Well, he goes to school.

Q. Is he living with Mr. Tudor now?

A. No, he isn't with us now. I brought him back here and sent him to his mother when they put him in jail. What could we do then? They broke up our home. We couldn't keep house and him in jail and us somewhere else.

Thereafter

J. S. BRAZILL

was called as a witness and testified on behalf of defendant as follows:

Mr. Chester:

Q. Will you state your name, Mr. Brazill?

A. John S. Brazill.

Q. What is your occupation?

A. Mortician and funeral director.

Q. And you are a member of the Selective Service Board of Glendale, are you not?

A. I am Chairman of the Selective Service Board No. 6.

Q. Do you recall the questionnaire of Arley Virgle Tudor? [40] A. Yes, sir.

Q. Do you recall that the questionnaire stated he was a conscientious objector?

A. Yes, a couple of "XX's" there, yes.

Thereupon closing arguments having been made the Court instructed the jury among other things as follows:

You are instructed that even if a Local Draft Board acts in an arbitrary and capricious manner, or denies a registrant a full and fair hearing, nevertheless the registrant must comply with the Board's order. The registrant may not disobey the Board's orders and then defend his dereliction by collaterally attacking the Board's administrative acts. In other words, the registrant may not lawfully disobey his Local Draft Board's order to report for induction and then offer as a defense for his failure to comply with the Board's order, some

arbitrary or capricious Act of the Board in determining his classification and issuing the order.

You are instructed that a registrant, under the Selective Service Act, who has deliberately refused to obey his Draft Board's order for induction may not, in defense to a charge of wilfully violating the Act, show that the Board erred in classifying him.

The defendant presents the foregoing as his proposed Bill of Exceptions in the above entitled matter, and prays that the same may be settled and allowed.

Dated this 9 day of June, 1943.

W. H. CHESTER

Attorney for Defendant,
412 Phx Natl. Bank Bldg.
Phoenix, Arizona. [41]

The foregoing Bill of Exceptions is correct and may be settled and allowed by the Court.

Dated: June 9, 1943.

FRANK E. FLYNN,

United States Attorney.

The foregoing Bill of Exceptions is correct and is hereby settled, allowed and approved.

Dated: June 9, 1943.

DAVE W. LING,

Judge United States
District Court.

[Endorsed]: Filed Jun 9, 1943. [42]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now the defendant above named, by his attorney, W. H. Chester, and says that subsequent to the institution of the above entitled cause and during the trial thereof on the 8th day of April, 1943, the Court committed manifest error in the admission of evidence and in the rulings upon motions of the defendant, and for his assignments of error specifies the following:

I.

That on the 17th day of February, 1943, the defendant moved to quash the indictment upon the grounds and for the reasons that said information does not state facts sufficient to constitute a crime or offense and that the indictment failed to state that the action of the Glendale, Arizona local selective service board acted in accordance with the rules and regulations of the selective service system or that the defendant was subject to the orders made by the Glendale, Arizona local selective service board. That the Honorable Court erred in denying said motion to quash, which order was entered on the 17th day of February, 1943.

II.

That the Honorable Court erred in admitting to evidence the Government's Exhibit No. 2 in evidence for the reason that said exhibit was a Selective Service Questionnaire that had not been executed in accordance with the rules of the Se-

lective Service System in that it had not been sworn to as provided by said rules. [43]

II.

That the Honorable Court erred in permitting testimony by Thomas Riordan as to what the Rules and Regulations of the Selective Service System were. (See pages 10, 11, 12, 13 of Reporter's Transcript). That such testimony could not be regarded as the best evidence and was not admissible.

III.

That the Honorable Court erred in instructing the jury that even if a Local Draft Board acted in an arbitrary and capricious manner, or denies a registrant a full and fair hearing nevertheless the registrant must comply with the Board's orders and then defend his dereliction by collaterally attacking the Board's administrative acts. It is the contention of the defendant that the Court is not bound to convict and punish one for disobedience of an unlawful order by whomsoever made. The defendant herein was proved to be a man with dependents which would, under the Selective Service Rules and Regulations, place him in a deferred class as 3-A. The questionnaire and evidence definitely show that the said defendant was a conscientious objector and could, under no rule of the Selective Service System be properly classed in class 1-A and inducted into military service. For the above reasons the orders of the Glendale, Arizona Selective Service Board, Maricopa County Local

Board No. 6 were unlawful and the Circuit Court of Appeals for the Ninth District has held that, "It is no violation of Section 11 of the Act to fail to obey an order which the Board had no power to make."

W. H. CHESTER,
Attorney for Defendant, 412
Phoenix Nat'l Bank Bldg.,
Phoenix, Arizona.

Received Copy this 9th day of June, 1943.

F. E. FLYNN,
United States Attorney.

[Endorsed]: Filed Jun. 9, 1943. [44]

In the United States District Court for the District
of Arizona

April 1943 Term

At Phoenix

MINUTE ENTRY OF
WEDNESDAY, JUNE 23, 1943
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

C-6414

[Title of Cause.]

On motion of Wm. H. Chester, Esquire, counsel for the defendant,

It Is Ordered that the duplicate of the Reporter's transcript, and the following exhibits admitted in evidence at the trial of this case be transmitted by

the Clerk of this Court to the United States Circuit Court of Appeals for the Ninth Circuit, with the transcript of record on Appeal herein:

Government's exhibits Numbers 1 to 9 inclusive.

Defendant's exhibit A. [45]

In the United States District Court for the District
of Arizona

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of said court, including the records, papers and files in the case of United States of America, plaintiff, versus Arley Virgle Tudor, defendant, numbered C-6414 Phoenix, on the docket of said court.

I further certify that the attached pages, numbered 1 to 45, inclusive, contain a full, true and correct transcript of such matters of record as are pertinent to the appeal in said cause, as the same appear from the originals thereof remaining on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the duplicate of the reporter's transcript, and the originals of Govern-

ment's exhibits 1 to 9, inclusive and of Defendant's exhibit A, in evidence, are transmitted herewith pursuant to order of the Court.

I further certify that the Clerk's fee for preparing and certifying this said transcript of record amounts to the sum of \$8.15 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court at Phoenix, Arizona, this 29th day of June, 1943.

[Seal] EDWARD W. SCRUGGS,
Clerk.

By WM. H. LOVELESS,
Chief Deputy Clerk. [46]

[Endorsed]: No. 10413. United States Circuit Court of Appeals for the Ninth Circuit. Arley Virgle Tudor, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed July 1, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 10413

UNITED STATES OF AMERICA,

vs.

ARLEY VIRGLE TUDOR,

Defendant.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON
APPEAL.

The Appellant relies upon the assignments of error appearing in the transcript of the record as the Statement of Points on which Appellant intends to rely on Appeal and hereby refers to said Assignments of Error as appearing in said transcript and adopts the same as his Statement of Points on which Appellant intends to rely on appeal and incorporates the same herein, at this point, by reference as though set out herein in full.

W. H. CHESTER,

Attorney for Appellant, 412
Phoenix Nat'l Bank Bldg.,
Phoenix, Arizona.

Copy received July 12th, 1943.

F. E. FLYNN,

U. S. Attorney.

By E. R. THURMAN,

Asst. U. S. Attorney.

[Endorsed]: Filed July 13, 1943. Paul P.
O'Brien, Clerk.

